



# BEWARE of the CREDIT SHARK



Sometimes when you are in debt, you can feel like surfers surrounded by sharks thinking that every call is from a shark attempting to take something you do not have. However, the Federal Fair Debt Collection Practices Act (FDCPA) does afford the consumer some protection.

## Credit Sharks:

Collection agencies with a *collect by any means necessary* mentality. Creditors become credit sharks when they transfer a debt to another internal department or outside organization for the specific purpose of collecting a debt. For example, R.M.S. (Risk Management Services) is a wholly owned subsidiary of Sears. When a debtor's account goes into default, it is sent to R.M.S. for collection.

## Rules to Keep Credit Sharks Caged

1. **Validate the Debt.** If you have any doubts about whether you actually owe the debt or the amount of the debt, request validation. The shark must stop all collection efforts on any disputed portion of the debt until it can obtain evidence that the disputed portion is valid.
2. **Know when a Credit Shark can communicate with you.** Unless given permission from the debtor, there are times when a shark cannot communicate with you.
  - a. Sharks cannot communicate with you at time or places that are known to be inconvenient, such as Thanksgivings, Christmas, and New Years. Sharks should not prey on you between 9:00pm and 8:00am.
  - b. If you have an attorney representing you, you must have your attorney's name and address, readily ascertainable. If the credit sharks contact you, tell them to call your attorney.
  - c. Credit sharks cannot attack while you are at work when they know or have reason to know that your employer does not allow such communications.
  - d. The FDCPA also allows you to write the sharks and let them know that you either refuse to pay the debt or you do not want them to contact you again concerning the debt. Use caution when exercising these options on a valid debt, for it will not doubt leave the sharks with one alternative—filing suit. Refusing to pay a debt should only be used when you really believe you do not owe the debt.
3. **Looks Can Deceive.** While most sharks are trained to intimidate and frustrate you, they cannot use criminal means or threat to harm, destroy your reputation, or damage any of your property. Credit sharks are also prohibited from using obscene or profane language, including name-calling, racial or ethnic slurs, and other derogatory comments that are akin to abusive or obscene language.

a. *Even Sharks Must be Honest.* Credit shark should never lead you to believe that it is a representative of the federal or state government.

b. *Even Sharks Must Play Fair.* The FDCPA strictly prevents credit sharks from adding fees or expenses to the balance unless such fees and expenses are authorized by the original contract that created the debt.

#### **4. How Do Sharks Get Punished**

a. When a debt collector has violated the FDCPA, you have two options to enforce the act.

i. First, you can sue the debt collector and attempt to recover damages directly. You may be fighting an uphill battle suing the credit collector. Absent convincing evidence of the violation, you will have a difficult time winning. Should you manage to put together enough evidence to win a case, the court will only award you actual damages. In most cases, the only damage will be to your pride.

ii. The second alternative to enforce a violation of the FDCPA is to file a complaint with the Federal Trade Commission ([www.ftc.gov](http://www.ftc.gov)) or with your local state consumer protection agency. In your complaint, provide as much details about the violation as possible.

#### **5. What Should I Really Do When the Sharks Arrive?**

a. *Establish Boundaries.* Take control of the conversation. Tell the credit shark that you do not mind providing an update once a month. Tell the credit shark when and where you will accept calls about the debt. Finally, let the shark know that the only subject you will discuss is the debt and whether there has been a change in your financial situation that will allow you to pay the debt. Most important, stick to the rules.

b. *Awake the Sharks When Ready to Pay.* Some sharks become idle waiting for you to make a move. In this case, the credit collectors have lost contact with you, stopped collection efforts, or do not have your phone number. In any event, you do not want to initiate contact with these creditors until you are ready to either pay the debt or start a payment plan. Before you awake them, save enough money to offer a settlement to fully satisfy the debt. Make sure to get the offer in writing before making the payment. Then, have the credit shark send you a letter stating that payment has been received and the account settled.

c. *Provide Necessary Information Only.* They will try to get as much information from you as they can - simply respond that all the information in their system is correct and you are not calling to provide updates but to make a proposal. If they insist on collecting information, hang up the phone and try another day.

d. *Just remember to relax.* The sharks are there to cause you to react before you think. If you do not remember anything else, do not let the sharks get you upset. Before that happens just hang-up the phone.

*This handout is for general informational purposes only. For specific questions concerning individual circumstances, or for questions in general, contact the Client Legal Services Office in your area.*

Yongsan Client Legal Services Office, Bldg 4106, room 229 (ACS building). Please call 738-6841/8111 for an appointment. Office hours: M, Tu, W, F 0900-1600 and Th 1300-1500.
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